



August 18, 1999

Mr. John Greene
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR99-2333

Dear Mr. Greene:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126615.

The City of Austin (the “city”) received a request from W. H. Moreca, III for access to five categories of information related to the Transportation User Fee, the Comprehensive Drainage Fee, and other matters. You refer to a determination that related litigation was reasonably anticipated, made by this office in Open Records Decision Letter No. 98-0305 (1998), on January 30, 1998. You relate that “the city has made available the information responsive to the five categories except for the information the Attorney General has already determined not to be public information.” You attach additional sample documents that the city believes are not releasable. You further contend that the submitted documents are excepted from disclosure by sections 552.103, 552.106, 552.107, and 552.111 of the Government Code. As you relate that all responsive information has been released to the requestor other than information previously determined by this office to be related to reasonably anticipated litigation, we limit this opinion to consideration of section 552.103(a) of the Government Code.

Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2)

the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You have supplied the citation and first page of Plaintiff's Original Petition, in the suit *Don E. Walden v. City of Austin*, No. 99 05564 (53rd Dist. Ct. Travis County, Tex. May 13, 1999). You relate that this suit seeks a writ of mandamus ordering release of the information found by this office, in Open Records Decision Letter No. 98-0305, to be excepted from disclosure by section 552.103 of the Government Code. From your assertions, we conclude that the information subject to the current request is related to this pending litigation. The submitted information may therefore be withheld at this time under section 552.103(a) of the Government Code.

In making this determination, we assume that the opposing party in litigation has not had access to the information. Absent special circumstances, where the opposing party to the litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in dark ink, appearing to read "MJ Burns", with a stylized flourish at the end.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126615

Encl. Submitted documents

cc: Mr. W. H. "Chip" Morea
6112 Anemone Cove
Austin, Texas 78759
(w/o enclosures)